

SENATE BILL NO. 96

INTRODUCED BY L. JENT

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A MENTAL EVALUATION OF CERTAIN CRIMINAL DEFENDANTS CLAIMING A MENTAL DISEASE OR DEFECT OR A DEVELOPMENTAL DISABILITY; AMENDING SECTIONS 46-14-311 AND 46-18-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-311, MCA, is amended to read:

"46-14-311. Consideration of mental disease or defect or developmental disability in sentencing.

(1) Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims AT THE TIME OF THE OMNIBUS HEARING HELD PURSUANT TO 46-13-110 OR, IF NO OMNIBUS HEARING IS HELD, AT THE TIME OF ANY CHANGE OF PLEA BY THE DEFENDANT that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect or developmental disability that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence that it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206 also consider the results of the presentence investigation required pursuant to subsection (2).

(2) Under the circumstances referred to in subsection (1), the sentencing court shall order a presentence investigation and a report on the investigation pursuant to 46-18-111. The investigation must include a mental evaluation by a person appointed by the director of the department of public health and human services or the director's designee. The evaluation must include an opinion as to whether the defendant suffered from a mental disease or defect or developmental disability with the effect as described in subsection (1). If the opinion concludes that the defendant did suffer from a mental disease or defect or developmental disability with the effect as described in subsection (1), the evaluation must also include a recommendation as to the care, custody, and treatment needs of the defendant. ~~Costs related to the evaluation must be paid in accordance with 46-14-202.~~

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2 **Section 2.** Section 46-18-111, MCA, is amended to read:

3 **"46-18-111. Presentence investigation -- when required.** (1) (a) Upon the acceptance of a plea or
4 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer
5 to make a presentence investigation and report. The district court shall consider the presentence investigation
6 report prior to sentencing.

7 (b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505,
8 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c) or if the defendant was convicted
9 under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46,
10 chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a
11 recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the
12 defendant presents to the community and the defendant's needs, unless the defendant was sentenced under
13 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex
14 offender treatment association or has comparable credentials acceptable to the department of labor and industry.
15 The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the
16 probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the
17 defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation
18 are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3,
19 chapter 5, part 9.

20 (c) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
21 pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence
22 investigation report and becomes part of the report. The report must be made available to persons and entities
23 as provided in 46-18-113.

24 (2) The court shall order a presentence investigation report unless the court makes a finding that a report
25 is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in
26 subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written
27 presentence investigation report by a probation and parole officer is presented to and considered by the district
28 court. ~~The court may not find that a report required by 46-14-311 is unnecessary or otherwise waive the~~
29 ~~requirement for that report.~~ The district court may order a presentence investigation for a defendant convicted
30 of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a

1 sexual or violent offense as defined in 46-23-502.

2 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
3 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.

4 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

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6 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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8 NEW SECTION. **Section 4. Applicability.** [This act] applies to a defendant convicted on a verdict of
9 guilty or a plea of guilty or nolo contendere on or after [the effective date of this act].

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